

COMMUNITY AFFAIRS

Division Of Codes And Standards
Uniform Construction Code
Interpretation; recreational park trailers
Proposed New Rule: N.J.A.C. 5:23-9.3

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124
Calendar: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2006-

Submit written comments by November 17,2006 to:

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SUSAN BASS LEVIN
Commissioner

The agency proposal follows:

Summary

This proposed new rule is a prospective interpretation of the Uniform Construction Code (UCC), N.J.A.C. 5:23, authorized by the Uniform Construction Code Act, N.J.S.A. 52:27D-119 *et seq.* This interpretation arises out of a decision rendered by a construction board of appeals in error regarding the applicability of the UCC to park model trailers. The proposed interpretation makes it clear that, because recreational park trailers are not subject to the Federal Manufactured Home Construction and Safety Standards, they are subject to the adopted subcodes of the Uniform Construction Code. Additionally, as part of this interpretation, the Department will be withdrawing UCC

Bulletin 93-6.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a) 5.

Social Impact Statement

The proposed new rule would be expected to have a positive social impact. It is important that the rules governing these structures be clear in order to protect the health and safety of the residents of these units.

Economic Impact Statement

To the extent that the manufacturers of recreational park trailers have been complying with the applicable provisions of the Uniform Construction Code, the proposed new rule would not have an economic impact. If there are manufacturers producing units for installation in New Jersey that do not comply with the UCC, the impact may be significant.

Federal Standards Statement

No Federal standards analysis is required because the proposed new rule is not being proposed pursuant to Federal law or in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements. The proposed rule makes it clear that recreational park trailers are not subject to the Federal Manufactured Home Construction and Safety Standards, but are subject to the adopted subcodes of the Uniform Construction Code.

Jobs Impact Statement

The Department does not anticipate the creation or loss of any jobs as a result of this proposed new rule.

Agriculture Industry Impact Statement

The Department does not anticipate that the proposed new rule would have any impact on the agricultural industry.

Regulatory Flexibility Statement

The proposed new rule would not impose any new recordkeeping or reporting requirements on "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule makes it clear that recreational park trailers are subject to the requirements of the Uniform Construction Code. This is not a change in the existing law; it is a clarification. While some of the manufacturers of recreational park trailers may be small businesses as defined by the Act, there is no basis for differential treatment because this rule is proposed to ensure that recreational park trailers meet the applicable health and safety standards.

Smart Growth Impact Statement

The Department does not anticipate that the proposed new rule would have any impact upon either the achievement of “smart growth” or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows.

5:23-9.3 Interpretation: Recreational park trailers

(a) This is a binding, prospective interpretation of the Uniform Construction Code (UCC) issued pursuant to the Uniform Construction Code Act, N.J.S.A. 52:27D-124.

1. The Uniform Construction Code Act gives the Commissioner the authority to issue such prospective interpretations to resolve inconsistent or conflicting code interpretations.

2. With regard to recreational park trailers, the Construction County Board of Appeals of Sussex County rendered a decision that no permit is required for the installation of these structures. This is inconsistent with the Uniform Construction Code Act itself and with the application of the Uniform Construction Code to recreational park trailers by the Department and by local enforcing agencies around the State.

3. Recreational park trailers, also known as “park models,” are subject to all of the provisions of the Uniform Construction Code, including the requirement to obtain a permit for installation and the requirement to have all applicable prior approvals. They are closed construction and are subject to the requirements of N.J.A.C. 5:23-4A. The basis for this determination is presented in (b) through (h) below.

(b) Any “building” or “structure” is subject to the State Uniform Construction Code. A building or a structure is, therefore, subject to all the substantive and procedural requirements of the Code. A “structure” is “a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land.”

(c) A recreational park trailer is a combination of materials. In fact, it is a combination of the same types of materials used in any home and it involves all the same safety issues as a home. It is intended for occupancy--the same type of occupancy as any other vacation home. While there may be some dispute as to whether it is on or above the surface of the parcel, it clearly is one or the other.

(d) The jurisdictional definitions of the Uniform Construction Code were deliberately made very expansive. The intent was that there be no loopholes. That is why the Act provides for full pre-emption of any construction regulations incorporated in any Act of the State of New Jersey, or any municipality, board, department, commission or agency upon promulgation of a regulation by the Department. The Department has not yet promulgated regulations for everything potentially covered by the Act. It has, however, adopted rules governing recreational park trailers. (See N.J.A.C. 5:23-4A.)

(e) A recreational park trailer is a structure that is enclosed with exterior walls--walls identical in construction to those of any dwelling. It is clearly designed for housing or shelter and it is arranged for the support of individuals. It is equipped with plumbing, electrical and mechanical systems just as is any dwelling.

(f) A recreational park trailer can be distinguished from a conventional recreational vehicle (R.V.). The full term is “recreational park trailer.” It is a special type of R.V. that is intended for installation in a “park.” They are built under a different standard than conventional R.V.’s. The principal difference between the R.V. standard and the recreational park trailer standard is that the recreational park trailer standard covers all types of the requirements typically found in a building code while the R.V. standard does not. The two are sufficiently different that there are even two different trade associations, one for recreational park trailers and one for traditional R.V.s.

(g) The UCC's jurisdiction in this matter is not pre-empted by the Federal Manufactured Housing and Safety Standard Act (MHSSA). No manufacturer is required to submit to the Federal system. If they voluntarily submit, then the Federal rules preempt any otherwise applicable State rules.

1. The reason for this approach is simple. Regulation to protect public health and safety is reserved, by the Constitution, to the states. Federal involvement in health and safety is only possible when a Federal interest can be found. The Federal interest in this case is the commerce clause.

2. The Federal government, therefore, can and does regulate in this area, but only so far as is necessary to facilitate interstate commerce. Multiple state regulations and enforcement procedures clearly can interfere with commerce in factory-constructed buildings. It is not uncommon, however, for a manufacturer to build identical units on the same assembly line with some having Federal labels and some having none. Those with none are intended for shipment to states and localities that do not have codes.

3. In that context, it is clear that the jurisdictional definitions of the MHSSA only establish an eligibility for Federal regulation, not a requirement for it. Recreational park trailers were written out of the Federal law and then that opt-out was broadened by U.S. Department of Housing and Urban Development (HUD) regulations (something quite inconceivable if Federal regulation was mandatory). When recreational park trailers were written out of Federal law, any possibility of the pre-emption of state rules was eliminated.

(h) The fact that a park model R.V. may be exempt from Federal regulation does not mean that it is exempt from State regulation. Exactly the opposite is the case. Confusion has arisen because there are State laws and rules that had to be passed to enable the State to work with HUD to administer the Federal standards when they are applicable. N.J.A.C. 5:23-4C.2 is such a rule. It only governs those structures that are eligible for and, in fact, have been made subject to Federal law by the manufacturers. Recreational park trailers are not eligible for Federal regulation, so N.J.A.C. 5:23- 4C does not apply.